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OGC 80-08761 OGC Has Reviewed

14 October 1980

MEMORANDUM FOR: Chief, Procurement Division, OL

FROM:

Assistant General Counsel

SUBJECT: FY 81 Service Contract

REFERENCES: A. Memo for from D/L, undated, subject: Delegation of Contracting Authority (OL 0 4543)

B. Memo to D/L from C/PD/OL, dated 8 October 1980, subject: FY 81 Service Contract

Bill:

1. In regards to section III, paragraph B, page 3 of the proposed contract, I have some serious reservations. I recognize that the language regarding Government control has been used in the past, but I do not think we should continue relying upon it. My reasons are simple. As presently expressed, it could very well be argued that reference A is a personal services contract and not a nonpersonal services agreement. Moreover, an employee of the Contractor may likewise claim creditable federal service for the time spent working at . The specific concern to me is the express degree of direct control the present provision gives to the Government.

2. I have drafted some language which is intended to reduce the personal services problem, yet give the Agency an effective voice in the contract performance. As you will note, it eliminates the provision that states "the Government retains the right to exercise extraordinary control over all Contractor personnel employed at said facility." In its stead, the suggested substitute provision says in part, "...the Contractor agrees that its employees will comply with the specific guidance provided directly by the contracting officer or his duly authorized representative.... This minimizes the control aspect which could be fatal to a non-personal services contract.

3. Please call me when you have a chance.

Attachment:
Draft

Regraded unclassified
when separated from
classified attachment(s)

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SECTION III GOVERNMENT CONTROL AND DIRECTION

- B. Due to the classified nature of the Government facility and its operation, stringent and unique security considerations, geographic separation of facility operations, and the diverse functions and responsibilities of the Contractor personnel assigned to said facility, the Contractor agrees that its employees will comply with the specific guidance provided directly by the Contracting Officer or his duly authorized representative. Notwithstanding this provision of the Contract, it is further understood and agreed that for the purpose of this Contract, said personnel are employees of the Contractor and are not employees of the Federal Government. Accordingly, said employees of the Contractor are not entitled to any benefits or services accruing to Federal employees other than those benefits or services specifically stated in this Contract.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional) FY 81 Service Contract

STAT

FROM:

NO.

OGC 80-08761

DATE

14 October 1980

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. C/PD/OL

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